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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/523,649

07/29/2005

Mark Brewer

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12/22/2010

ARIZONA CHEMICAL COMPANY, LLC
ATTN: INTELLECTUAL PROPERTY DEPARTMENT (LEGAL)
P.O. Box 550850
Jacksonville, FL 32255

EXAMINER

HINES, LATOSHA D

ART UNIT

PAPER NUMBER

1775

MAIL DATE

DELIVERY MODE

12/22/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/523,649	Applicant(s) BREWER ET AL.	
	Examiner LATOSHA HINES	Art Unit 1775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-27 and 29-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-27 and 29-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1, 4-27, and 29-33 are pending and have been fully considered. Claims 2-3 and 28 have been canceled.
2. The rejection under 35 USC 112, 2nd paragraph, is withdrawn in light of applicants' amendments and remarks.

Continued Examination Under 37 CFR 1.114

3. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicants' submission filed on 20 October 2010 has been entered.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 4-27, and 29-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over KRULL et al. (US 2002/0095857).

KRULL et al. discloses low-temperature stabilized additives for fuel. The composition comprises tall oil fatty acid compositions comprising a mixture of saturated and unsaturated fatty acids and a sulfur content of up to 0.05 wt%.

The proportion of saturated fatty acids is preferably less than 10 wt% and at least 90 wt% of the constituents consist of unsaturated fatty acids (paragraphs 0017-0026). Various examples are disclosed by KRULL et al. which have a cloud point of between -27 and -37 degrees Celsius (Table 2). For example, the composition of the tall oil fatty acid A1 comprises 30% of oleic acid (=C18;1), 60% of linoleic acid (=C18;2) and other polyunsaturated fatty acids and 4% of saturated fatty acids. Krull discloses in paragraphs 0028-0031, various fatty acids, for example linolenic acid (C18:3) comprising 1-40% by weight. The mixtures can be used alone or also together with other additives, for example with other pour point depressants or dewaxing auxiliaries, with corrosion inhibitors, antioxidants, sludge inhibitors, dehazers, conductivity improvers, lubricity additives and additives for lowering the cloud point. They are furthermore successfully employed together with additive packages which comprise, inter alia, known ash-free dispersion additives, detergents, antifoams and corrosion inhibitors. The additives according to KRULL et al. are preferably used in middle distillates which contain 0.05% by weight or less of sulfur, particularly preferably less than 350 ppm of sulfur, in particular less than 200 ppm of sulfur and in special cases less than 50 ppm of sulfur.

The examiner is of the position that the composition disclosed in the prior art clearly meet the limitations of the claimed composition when KRULL et al. discloses various saturated and unsaturated fatty acids.

Response to Arguments

1. Applicants' arguments filed January 11, 2010 have been fully considered but they are not persuasive.

a. Applicants argued that claim 1 is patentable over Krull at least by the required "fatty acid composition comprising less than 3% saturated fatty acids" and/or more than 10% C18:3 fatty acids. Examiner disagrees. Krull discloses in paragraph 0014 that the proportion of saturated fatty acids is from 1 to 99 % by weight. Krull discloses, the saturated fatty acid component A1) may comprise from 1 to less than 20% by weight which includes saturated fatty acids in amounts of less than 3 %. Krull has met the limitation of claim 1 for saturated fatty acid content. Fatty acid constituent A2) may contain one or more double bonds and may be present in the fatty acid composition in an amount of up to 99% by weight. In applicant's dependent claim 3, the fatty acid composition of claim 1 may be derived from tall oil. Krull discloses that tall oil fatty acid may be used for constituent A2). Thus the claimed fatty acid composition appears to be taught since Tall oil fatty acid contains rosins, sterols, fatty acids (mainly palmitic acid, oleic acid, and linoleic acid), fatty alcohols, and other alkyl hydrocarbon derivatives.

b. Applicants argued that Krull does not disclose C18:3 fatty acids. Examiner disagrees. Krull discloses in paragraphs 0028-0031, various fatty acids, for example linolenic acid (C18:3) comprising 1-40% by weight.

- c. Applicants argued that the prior art applied does not specifically teach the cloud point of the fatty acid composition. However, the presently claimed invention covers a large number of possible fatty acid concentrations, but the present examples only show select combinations of fatty acids and resin acid concentrations. The examiner acknowledges these results, however, the examples are insufficient to overcome the above rejection because (1) applicants have not compared the claimed invention to the teachings of the reference and (2) the examples are not commensurate in scope with the claims because the examples are directed to specifics not literally defined by the claims, for example, the examples use specific fatty acid amounts, a specific resin amounts and a specific fatty acid blend which are all not commensurate in scope with claim 1 at least. The examples no way allow the examiner to determine a trend for the results for any and all amounts of additive. *In re Lohr* 137 USPQ 548. Evidence of unexpected results must be commensurate in scope with the subject matter claimed. *In re Linder* 173 USPQ 356.
- d. Applicants argued that Krull discloses a cloud point but has to use a polar-nitrogen compound to determine the cloud point. However, it is common knowledge that the 'cloudiness' observed in fatty acid mixtures as the temperature is reduced it causes crystallization of certain components. The crystallization behavior of fatty acid components are determined by their melting points. It is obvious to one of ordinary skill in the art that an increase in the amount of low melting point of unsaturated fatty acids will lead to lower cloud

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points. The solution of determining the cloud point of fatty acids with various known additives is a fundamental physical characteristic of the fatty acid species and is a matter of common general knowledge in the art. Determining the cloud point of fatty acids is not novel and an unpatentable invention.

- e. A reference is good not only for what it teaches but also for what one of ordinary skill might reasonably infer from the teachings. *In re Opprecht* 12 USPQ 2d 1235, 1236 (CAFC 1989); *In re Bode* USPQ 12; *In re Lamberti* 192 USPQ 278; *In re Bozek* 163 USPQ 545,549 (CCPA 1969); *In re Van Mater* 144 USPQ 421; *In re Jacoby* 135 USPQ 317; *In re LeGrice* 133 USPQ 365; *In re Preda* 159 USPQ 342 (CCPA 1968). In addition, "A reference can be used for all it's realistically teachings and is not limited to the disclosure in its preferred embodiments" See *In re Van Marter*, 144 USPQ 421.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LATOSHA HINES whose telephone number is 571-270-5551. The examiner can normally be reached on Monday thru Thursday from 8 a.m. to 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Marcheschi can be reached on 571-272-1374. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LATOSHA HINES/
Examiner, Art Unit 1775

/Ellen M McAvoy/
Primary Examiner, Art Unit 1771